NG ENG WAH

v.

THE GETZ CORP. (SINGAPORE) SDN. BHD.

HIGH COURT, SINGAPORE
LP THEAN J
[DISTRICT COURT APPEAL NO. 63 OF 1987]
24 MAY 1989

TORT: *Negligence - Collision between motor-van - Question on point of impact - Independant evidence of investigating officer - Conflicting versions by parties - Whether District Court Judge must expressly make finding on whose evidence he is accepting.*

A collision took place on 9 February 1980 between 2 motor-vans near a bend along Ponggol Road. The driver in the first motor-van was killed and the appellant driver of the second motor-van sustained serious injuries. The appellant subsequently instituted proceedings in District Court against the respondents and the personal representative of the deceased driver claiming damages for negligence on the part of the deceased driver.

There was were total conflict in the evidence adduced by both appellant and respondent. The appellant testified that he was travelling at about 40 kmph on his side of the road and the oncoming deceased's motor-van was on the wrong side of the road. When he saw that, he immediately applied the brakes and swerved to the left but the collision took place. His evidence was corroborated by one passenger who was inside the motor-van at the material time. The appellant also adduced independant evidence of the investigating officer of the accident (PW1).

The deceased's motor-van at the material time also had a passenger (DW1). She testified that she saw the appellant's van coming from the opposite direction, it was on the wrong side of the road. She maintained that the collision took place on the deceased side of the road.

The learned District Court Judge on the evidence before him, including the photographs and sketch plan, found that the appellant at the material time was travelling on the wrong side of the road and his van collided into the deceased's van. He dismissed the appellant's claim with costs. Against that decision, this appeal was brought on the grounds that the learned District Judge had made no finding of the point of impact and he did not say whether he accepted the evidence of the appellant or PW3, nor did he find whether the deceased was partly to blame.

Held:

[1] The learned District Court Judge did expressly say that he could not accept the evidence of the appellant that the impact occurred at the point marked "X" and gave his reasons in support of this finding.

[2] It is quite apparent and obvious that the learned District Court Judge did not accept the appellant's and PW3's evidence and accepted the evidence of DW1. He recounted and reviewed the material portions of the evidence of the appellant, PW3 and PW1 and decided that the appellant "was travelling on the wrong side of the road and he collided into the deceased's van". That finding was tantamount to a rejection of the appellant's and PW3's evidence and also to a finding that the appellant was wholly to blame. Cited *Watt or Thomas v. Thomas*.

[3] After a review of the evidence adduced, in particular the sketch plan photographs and the position's of the respective vehicles after the impact, the collision must have taken place on the side of the road on which the deceased van was travelling and the impact must have occurred near the point where the broken glasses were found. The Court found itself in total agreement with the conclusion of the learned District Judge.

[Appeal dismissed.]

Case referred to:
Watt or Thomas v. Thomas [1947] AC 484

JUDGMENT

LP Thean J:

On 9 February 1980, the appellant was driving a Motor-Van No. GE4158T ("appellant's van") along Ponggol Road from Upper Serangoon Road towards the direction of Track 1, (Ponggol End). He had with him at that time a passenger, Low Aik Bee, who was his brother-in-law and was seated next to him. At or near a bend, a collision took place between his van and another Motor-Van No. GF5870H coming from the opposite direction. It was a very severe collision. The driver ("the deceased") of the motor-van GF5870H was fatally injured, and the appellant sustained serious injuries from which, fortunately, he recovered. The force of the impact was tremendous. The passenger in the appellant's van was thrown out of the van and landed on the nearside of the road, and motor-van GF5870H ("deceased's van") appeared to have been pushed backwards onto the grass verge and over a drain with its front badly damaged and facing the road. The appellant's van, after the collision, was on its offside and across the road with its front also badly damaged and facing the deceased's van.

The appellant subsequently instituted these proceedings in the District Court against the respondents and the personal representative of the deceased driver claiming damages for negligence on the part of the deceased driver. In due course, the case came on for hearing in the District Court. The investigating officer of the accident is Wong Ah Mooi (PW1) who went to the scene after the accident. She drew a sketch plan of the scene of the accident and took some measurements. She testified that there was a long line of deep scratch on the road leading to the offside front wheel of the appellant's vehicle. Next to and alongside the deep scratch was a tyre mark, and the mark was fresh. She could not say what the scratch was. The exact measurement of the scratch and tyre mark was not given but based on comparative measurements which the investigating officer provided, its length was probably about 20 meters.

The appellant testified that just before the accident his vehicle was travelling on his side of the road at about 40 kmph, and the oncoming vehicle was on the wrong side of the road, i.e., on his side of the road. When he saw the deceased's van coming towards him, he immediately applied the brakes and at the same time swerved his vehicle to the left and then the collision took place. He could not say whether his vehicle moved forward after the impact. He maintained that the collision took place on his side of the road at the point which was the beginning of the deep scratch and tyre mark where he marked "X". His passenger, Low Aik Bee (PW3) also gave evidence. He corroborated the appellant's evidence that the appellant's van, before the accident, was on his side of the road and was travelling at about 40 to 45 kmph. While the appellant's van was travelling on his side of the road, an oncoming vehicle, that is the deceased's van, from the opposite direction collided into the appellant's van. He also maintained that the deceased's van was on the wrong side of the road and

that at the time of the impact half of that vehicle was on the appellant's side of the road. When the impact occurred, he was thrown out of the appellant's van and landed on or near the grass verge.

The deceased's van at the material time also had a passenger. She is Giam Ching Keow (DW1). She was seated next to the deceased driver and carrying an infant. She said that she saw the appellant's van coming from the opposite direction; it was on the wrong side of the road, i.e., the deceased's side of the road. The deceased applied the brakes and came to a stop to give way to the appellant's van, which then came to the front and collided into the deceased's van. She maintained that the collision took place on the deceased's side of the road.

The learned District Judge on the evidence before him, including the photographs and the sketch plan, found that the appellant at the material time was traveling on the wrong side of the road and his van collided into the deceased's van. He dismissed the claim of the appellant with costs. Against that decision this appeal was brought, and at the conclusion of the hearing I dismissed the appeal with costs.

The main criticism directed against the grounds of decision of the learned District Judge was that he failed to make specific findings: he made no observation or finding of the deep scratch and tyre mark on the road and did not consider the implication or significance thereof; he made no finding of the point of impact - whether it was at the point "X" as alleged by the appellant or at the deceased's side of the road as alleged by DW1 or elsewhere; he did not say whether he accepted the evidence of the appellant or PW3; nor did he find whether the deceased was partly to blame. All these, Counsel for the appellant argued, were not expressed in the grounds of decision of the learned District Judge. I did not, however, agree with him. First, the learned District Judge did expressly say that he could not accept the evidence of the appellant that the impact occurred at the point marked "X" and gave his reasons in support of this finding. Secondly, as contended by Counsel for the respondents and I accepted his contention, it is quite apparent and obvious that the learned District Judge did not accept the evidence of the appellant and PW3 and accepted the evidence of DW1. He recounted and reviewed the material portions of the evidence of the appellant, PW3 and DW1, and came to the conclusion that the appellant "was travelling on the wrong side of the road and he collided into the motor-van GF5870H". That finding was tantamount to a rejection of the appellant's and PW3's evidence and also to a finding that the appellant was wholly to blame. I was reminded by Counsel for the respondent of what Lord Simonds said in the well-known case of *Watt or Thomas v. Thomas* [1947] AC 484 at p. 492:

> ... Relying on the testimony of certain witnesses called on behalf of the respondent (whom I need not name) he (Counsel for the respondent) said that the learned Lord Ordinary had come to a conclusion which was diametrically opposed to that testimony, yet he had not explicitly stated that he did not accept them as witnesses of truth nor indeed, made any adverse comment upon them. Your Lordships were therefore invited to find that the learned Judge had forgotten or ignored this evidence and to hold that his judgment was thereby vitiated. I believe this to be fundamentally unsound criticism. The trial Judge has come to certain conclusions of fact; your Lordships are entitled and bound, unless there is compelling reason to the contrary, to assume that he has taken the whole of the evidence into his consideration. If his conclusion is inconsistent with the evidence of certain of the witnesses but he does not, in terms, stigmatize them as false witnesses, it is not the proper or necessary inference that he has forgotten or ignored them; of this the present case is a cogent example, for I can well understand why the Lord Ordinary, while not accepting his evidence, did not think fit to comment unkindly on one at least of the witnesses in question.

I found the above passage extremely appropriate and respectfully adopted it (with suitable modifications) as a complete answer to the arguments advanced by Counsel for the appellant.

I had also reviewed the evidence adduced and found myself in total agreement with the conclusion of the learned District Judge. The evidence against the appellant was overwhelming. From the evidence and, in particular, the sketch plan and photographs and the positions of the respective vehicles after the impact, the collision must have taken place on the side of the road on which the deceased's van was travelling and the impact must have occurred near the point where the broken glasses were found. The tyre mark and again the positions of the respective vehicles after the collision showed cogently that the appellant was at the material time travelling very fast; the force of the impact had pushed the deceased's van backwards and to the side onto the grass verge and, what is more over the drain. Having regard to such incontrovertible documentary evidence, the evidence of the appellant and PW3 that just before the collision the appellant's van was travelling at about 40 kmph could not possibly be accepted. Nor could it be accepted that the collision occurred on their side of the road. Accordingly, in my judgment, the learned District Judge was right in dismissing the claim.

Also found at [1989] 2 CLJ 712